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# Government Oversight Committee Report of the Administration's Actions on Unemployment Compensation Recommendations

Maine Department of Labor

Maine Bureau of Unemployment Compensation

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Good Afternoon Director Ashcroft,

I am pleased to submit the attached Report of the Administration's Actions on Unemployment Compensation Recommendations. This report reflects the Maine Department of Labor's responsiveness to the recommendations and the hard work of our staff and that of the Unemployment Insurance Commission to undertake these significant and comprehensive reforms.

We welcomed the findings of both the Findings and Recommendations of the Unemployment Reform Blue Ribbon Commission in December 2013 and the February 2014 letter from the U.S. Department of Labor. These findings not only concurred with many of the concerns we had, but also provided concrete recommendations. As Commissioner, I appreciated the dedication and seriousness with which both the Blue Ribbon Commission and the US Department of Labor's solicitor took in reviewing Maine's unemployment system.

Upon receipt of both reports-each of which conducted separate fact-finding reviews, random audits, and interviews-our staff took immediate action to address all the recommendations from both reports. It is critical that both employers and claimants receive due process under the same legal standards, that they believe that the process is fair, and they understand that their evidence and witnesses will be allowed into the record and weighted properly and consistently.

The attached report includes both sets of recommendations (Blue Ribbon and US DOL) and breaks them out by task. It then indicates who made the recommendation, provides the current implementation status, and describes the progress and action(s) to date.

We believe that these reforms will not only improve the unemployment system for [sic] but also improve communication and collaboration within the Maine Department of Labor.

Best, Jeanne

Jeanne S. Paquette Commissioner

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<b><u>Rec #</u></b>	<b><u>Recommendation</u></b>	<b><u>Recommended by</u></b>	<b><u>Status</u></b>	<b><u>Action</u></b>
<b><u>1A</u></b>	Funding sufficient to add staff to address understaffing problem is available from Reed Act distributions made to the State.	Blue Ribbon Commission	Complete	The Department of Labor (DOL) submitted the legislation required to access Reed Act funds at the beginning of the Second Regular Session of the 126th Legislature. LD 1802, "An Act To Allocate a Portion of the Reed Act Distribution of 2002 To Use for the Administration of the Unemployment Insurance and Employment Services Programs," passed and Governor LePage signed it into law on April 3, 2014 (PL 2013, Ch. 511). This emergency legislation dealt with several issues that affect the Bureau of Unemployment Compensation (BUC), Bureau of Employment Services (BES) and Center for Workforce Research & Information (CWRI). In addition to authorizing the funds needed to address the understaffing problem, the legislation also authorized the headcount that permits the BUC to hire staff (outlined in Recommendation #1B.)
<b><u>1B</u></b>	Address understaffing problem at Levels One and Two promptly. Precise level of staff increases should be determined after an analysis of backlog, workload and improvements in efficiency. Blue Ribbon Commission concluded that 6 to 11 additional adjudicators should be added at Level One, and 2 to 3 hearing officers at Level Two.	Blue Ribbon Commission	Implemented/ In process	Before the DOL submitted LD 1802, we assessed the staffing levels and positions needed to address the understaffing problems efficiently. The assessment concluded that we need 10 Adjudicators, 3 Hearing Officers in the BUC, and 1 Law Clerk in the Unemployment Insurance Commission (UIC) to draft/write UIC decisions after UIC makes the decision. Because LD 1802 passed, Reed Act funds were authorized for the BUC to hire these staff members. Plans to expedite the hiring process began as soon as Governor LePage signed the law. Authorization to begin recruitment occurred on June 8 and positions are posted on the state jobs website.

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<b><u>1C</u></b>	Additional collection of overpayment debt through implementation of the Federal Tax Offset Program (TOP) in April 2014, which will provide an additional cushion to the Unemployment Insurance Trust Fund.	Blue Ribbon Commission	Implemented/ Ongoing	<p>The BUC implemented the Tax Offset Program (TOPs) in April 2014. This program allows the BUC to look back 10 years in order to recover unemployment benefit debt by partnering with the IRS to offset federal income tax refunds. The BUC recovered <b>\$334,000</b> in overpayment debt during the months of April and May. Prior to launching TOPs, the BUC sent letters to people who needed to repay benefits for which they were not eligible. The letter warned these individuals that they owed funds, were eligible for the offset and offered the opportunity to pay the BUC directly or set up a payment plan. In response to the letter, a significant number of individuals opted to set up payment plans rather than having their income tax refunds offset to clear the debt. Previously, these individuals had made no attempt to repay debt.</p> <p>* TOPs is authorized by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996.</p>

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<b><u>2A</u></b>	Establish a Precedent Committee under the direction of the Commissioner of Maine's DOL and the Director of the Bureau of Unemployment Compensation. Include representatives of all three levels of the unemployment system. Meet regularly to consider issues of common interest and areas in which the application of law and procedure could be improved and made more efficient throughout the three levels of the system.	Blue Ribbon Commission	Implemented/ Ongoing	The DOL established the Precedent Committee in March 2014. Liz Wyman, Chief Hearing Officer for the Division of Administrative Hearings (DAH), chairs this committee, which includes the Division Heads of Quality Control (Kristi Burns) and the Benefit Claim Center (Skip Tompkins), three UIC Commissioners (Chairwoman Jennifer Duddy, Vince O'Malley, Ed Kelleher), Assistant Attorney General (Nancy Macirowski) and Commissioner of Labor (Jeanne Paquette). The purposes of the Precedent Committee are to ensure consistency, discuss policy and rule changes, ensure consistent and fair application of law, and improve communication between the three levels of the unemployment system. Since its inception, the committee has met Tuesday, March 4, 2014; Monday, March 24, 2014; Monday, April 14, 2014, Monday, May 19, 2014, and June 16, 2014. Since its implementation, the Precedent Committee has drafted a proposed rule to address the topic of work search, started work on another proposed rule to address the topic of training waiver determinations, reached consensus on interpretation standards for fact finding interviews, and started work on a good cause standard.

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<b><u>2B</u></b>	Develop and circulate a manual to provide guidance on interpreting and administering relevant rules and procedures for the benefit of adjudicators, hearing officers and commissioners	Blue Ribbon Commission	Implemented/ Ongoing	Liz Wyman has created a Precedent Manual, which includes the final versions of information on policies and cases that have been discussed by the Precedent Committee thus far. In addition, Liz is adding to a notebook she had started when she was the Assistant Attorney General (AAG) representing the DOL. In it, she lists each case number as well as a summary of that case. This notebook will also serve as a reference for use by the DAH.

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<b>3</b>	Under direction of the Director of the Bureau of Unemployment Compensation, the Chief Hearing Officer of Level Two be charged with the responsibility of routinely conducting a quality review of decisions rendered by all hearing officers. The review should be broad ranging, but should include evidentiary practices, both in terms of admission of evidence and analysis. Any areas of concern or opportunity for improvement identified by the quality review should be followed up with training, either individually or as a group.	Blue Ribbon Commission	Implemented/ Ongoing	Effective February 2014, Liz Wyman started an in-house process in which she reviews a minimum of two hearings per hearing officer per month by examining random hearings that were conducted during the previous month. She also reviews hearings when a complaint is raised or a hearing officer requests it. On top of the in-house review, in April the BUC participated in its first quarterly federal audit since the U.S. Department of Labor (USDOL) issued its recommendations in February 2014. This Federal Quality Review (QR) audit was held in response to allegations that had been made in the press. The Federal QR audit required a review of 20 random cases that were heard during the first quarter of 2014. USDOL auditors examined these cases to determine if bias and/or undue political influence had affected the outcome. The auditors told the DOL that they did not find evidence of either in this review. Liz expects to conduct in-house reviews on a monthly basis and participate in the federal QR audit in lieu of the in-house review quarterly. When Liz examines the hearings, she does so with an ear towards due process issues and the federal QR standards we are required to meet, which include evidentiary issues, such as the admission of documents or testimony. Her review also includes ensuring the opportunity for cross examination, asking questions to obtain necessary and relevant evidence and keeping the hearing focused on the issues on appeal. As Liz conduct the in-house reviews, she identifies patterns and documents issues that may require follow up, either on an individual or group basis.

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<u>4</u>	Develop improved instructional and educational materials and make them accessible to the general public. Include representatives of employers and employees in the design process for such materials.	Blue Ribbon Commission	Implemented/ Ongoing	Several improvements to the unemployment system have been put in place that focus on education and materials. A large-scale outreach effort is launching this month with 10 instructional videos on the website. These videos, produced through a grant from the USDOL that is focused on increasing program integrity, were designed to increase understanding of the unemployment system and processes, improve compliance with its rules and decrease fraud and improper payments. The videos will roll out on the DOL website in June and July. They are: "What should I do if I become Unemployed," "I just filed my first claim, now what?," "Benefit Rights and Responsibilities," "Common Mistakes," "If I am unemployed and collecting benefits but earning money, do I have to report it?," "How do I register as an employer and pay unemployment taxes?," "Protect your business from higher unemployment taxes," "How to file an appeal," "The Hearing Process," and "Work Search Tips."



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<b><u>5</u></b>	Initial claims forms sent to employers and hearing forms sent thereafter should prompt the employer to identify a point of contact with a telephone number. Additionally, forms relating to discharge should be modified to permit the distinction to be drawn between a discharge and discharge for misconduct	Blue Ribbon Commission	Implemented	In April 2014, the BUC modified the initial claims forms that we send to employers, as well as the Notice of Hearing forms that we send thereafter. The revised forms prompt the employer to identify a point of contact with a telephone number, distinguish between a discharge and a discharge for misconduct, and provide space that allows the employer to write in a reason for termination.
<b><u>6</u></b>	Implement an immediate technology upgrade, including one that would allow for the electronic filing of documents by employers and employees	Blue Ribbon Commission	Implemented/ In process	For nearly a year, employers have been able to file separation and wage information electronically, using either the State Information Data Exchange System (SIDES) or E-Response website programs. Moreover, a federally-funded consortium, comprised of subject matter experts from Maine, Mississippi and Rhode Island, has been working to develop a new information technology (IT) backbone that will upgrade our 40-year old IT system and expand on these features. The upgrade will create a state-of-the-art, cloud-based system that adapts a proven, recently modernized model in Mississippi, rather than building a new system from scratch. The new Benefit system is targeted to roll out in 2016. Development on the Unemployment Tax system, scheduled to start after Benefits is completed, is expected to be available in 2018.

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7	Implement a minor but important clarification in the handling of documentary submissions contained in the case files as they progress from Level One to Level Two.	Blue Ribbon Commission & US DOL	Implemented/ In process	Both the Blue Ribbon Commission and the USDOL recommended the following change in procedure, in which DAH hearing officers enter "30-day materials" into the record at the beginning of the hearing. The phrase "30-day materials" refers to the packet of documents, submitted by both parties, that deputies at Level One had available when they made their decisions. After training provided by Liz Wyman in May 2014, DAH hearing officers began entering 30-day materials into the record as an exhibit during their hearings. Both parties can reference these documents during the Level Two hearing, and the documents will be in the record as evidence whether they are referred to or not. Hearing officers can give the documents the weight that is deemed appropriate depending on the testimony of the parties and the issues on appeal. Although the hearing officers describe this process at the beginning of each hearing, the department is continuing to develop messaging tools for notifying employers and individuals in a broader, proactive manner. Two new videos on the hearing process, "How to file an appeal" and "The Hearing Process," will also assist with this effort.

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<b><u>1</u></b>	Review statutes, regulations and practices and consider some of the more generous evidentiary UC appeals practices suggested in The Guide. Institute a training regimen to assure consistency in the conduct of hearings and the preparation of decisions	US DOL	Implemented/ Ongoing	Liz Wyman conducts hearing officer training every other month. She held her first meeting January 31, immediately after becoming the new Chief Hearing Officer. On March 7, she presented training on hearsay, and on May 9, she conducted training on several evidence-based topics, including "Prehearing Conferences," "Introduction of 30-day Materials into the Hearing Record," and "Handling Remands to the Bureau." As a result of the May 9 training, hearing officers are aware of the need to be inclusive regarding evidence.
<b><u>2</u></b>	Establish uniform standards for inclusion of agency documents in the case file and determine the weight those documents should be given under the evidentiary law of the State of Maine.	US DOL	Implemented/ In process	The Administration's actions on this recommendation are discussed in Recommendation #7 on page 8.

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<b><u>3</u></b>	Resume negotiations with a group of officials with a stake in the UC program - including officials from MDOL, the UI Commission, and the Maine Attorney General's office - to settle the evidentiary and practice issues identified in this analysis by the US DOL.	US DOL	Implemented/ Ongoing	The Administration's actions on this recommendation are discussed in Recommendation #2A on page 3.
<b><u>4</u></b>	Maine Attorney General to identify, and MDOL and the UI Commission to implement, improvements in the UC appeals process to achieve greater consistency with state law and fairness and integrity in the UC program. Consider establishing a precedent manual that identifies Commission and state court decisions involving the interpretation of law. DAH could use the precedent manual as a reference for future decisions.	US DOL	Implemented/ Ongoing	In addition to the Precedent Committee activities described in Recommendation #2A on page 3, AAG Nancy Macirowski has been regularly attending and contributing to the Precedent Committee. Besides being an excellent practice, her participation also addresses the USDOL recommendation that the AG's office offer direct assistance as we move forward. As described in Recommendation #2B on page 4, Liz has created a Precedent Manual, as well as a separate case notebook for reference by DAH.

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<u>5</u>	Governor and political appointees ensure the UC appeals process is insulated from outside pressures that might compromise even the appearance of fairness and impartiality. Ensure hearing officers are free from actual or perceived intimidation. Make clear that no personnel action will be taken against hearing officers over this matter.	US DOL	Implemented/ Ongoing	As described in Recommendation #3 on page 5, the USDOL conducted its first quarterly follow-up audit in April 2014. During the exit interview, the auditors told the DOL that they found no evidence that bias or undue political influence had affected the outcomes of the appeal hearings they reviewed. Future quarterly QR audits are expected to continue for an undetermined time period. As Chief Hearing Officer and manager of the DAH, Liz is in regular communication with the hearing officers. She reported that she has received no feedback from hearing officers indicating that they have been intimidated, nor has personnel action been taken against any hearing officers. Finally, hearing officers have been receptive to training and have been implementing ideas from recent training efforts.